IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

* *

TIMOTHY GEORGE BALDWIN

Petitioner

VERSUS NO. 83-5432

ROSS MAGGIO,
WARDEN, LOUISIANA STATE PENITENTIARY, ANGOLA

AND

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL OF THE STATE OF LOUISIANA

Respondents

* *

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

* *

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

* *

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

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OPPOSITION TO PETITION FOR

WRIT OF CERTIORARI

* *

Petitioner, Timothy George Baldwin, has applied to this Honorable Court for a Writ of Certiorari setting forth three issues for review. It is respectfully submitted that this application should be denied for the reasons set forth as follows.

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INDEX OF AUTHORITIES

STATEMENT OF THE CASE

For the convenience of this Honorable Court, a chronological table outlining the history of this case is provided below:

1. Murder of Mary James Peters - April 4, 1978.

2. Indictment of Timothy George Baldwin for First Degree Murder of Peters - May 23, 1978.

3. Trial of Baldwin - July 24-28, 1978.

4. Conviction for First Degree Murder - July 28, 1978. The jury recommended the death sentence, finding two aggravating circumstances, "1. the offender was engaged in the perpetration or attempted perpetration of an armed robbery [Baldwin had a knife on his person] and 2. the offense was committed in an especially heinous, atrocious or cruel manner."

5. Baldwin sentenced to death - September 5, 1978.

6. Louisiana Supreme Court affirms Baldwin's conviction: State v. Baldwin, 388 So.2d 664 (La. 1980) - May 19, 1980. Forty Assignments of Error were filed. All were without merit.

7. Rehearing denied - October 6, 1980.

8. United States Supreme Court denies application for certiorari: Baldwin v. Louisiana, 101 S.Ct. 901, 449 U.S. 1103 - January 12, 1981.

9. Rehearing denied: Baldwin v. Louisiana, 101 S.Ct. 1493, 450 U.S. 971 - March 2, 1981.

10. Post Conviction Relief filed in State District Court. Denied for lack of jurisdiction.

11. Louisiana Supreme Court denies Post Conviction Relief: State v. Baldwin, 397 So.2d 828 (La. 1981) - March 27, 1981.

12. Baldwin v. Blackburn, 524 F.Supp. 332 U.S.D.C., Western District, Louisiana. Ten allegations were made, including ineffective assistance of counsel (involving the motel check-in receipt) and district by district proportionality review - April 28, 1981.

13. Certificate of Probable Cause denied - May 1, 1981.

14. Baldwin v. Blackburn, 653 F.2d 842, Fifth Circuit Court of Appeal. Seven allegations were made, including ineffective assistance of counsel (motel receipt) and district by district proportionality review - August 14, 1981- Denied.

15. United States Supreme Court denies petition for certiorari: Baldwin v. Blackburn, 102 S.Ct. 2021, 456 U.S. 950 - April 26, 1982.

16. Trial court sets a new execution date - May 7, 1982.

17. Post Conviction Relief denied in State District Court - May 17, 1982.

18. Louisiana Supreme Court denied Post Conviction Relief: State ex. rel. Baldwin v. Maggio, 414 So.2d 777 (La. 1982) - May 18, 1982.

19. Habeas Corpus proceeding - United States District Court, Western District of Louisiana, Monroe Division: Baldwin v. Maggio, CA-82-1249. Denied May 20, 1982.

20. Baldwin v. Maggio, 704 F.2d 1325, Fifth Circuit Court of Appeals. Habeas corpus denied. Three allegations: ineffective assistance of counsel (motel receipt); ineffective assistance of counsel (sentencing phase); district by district proportionality review - May 16, 1983.

21. Rehearing and Rehearing En Banc denied - June 23, 1983.

22. Denial of Stay of Execution pending application for writs of certiorari: Baldwin v. Maggio, 715 F.2d 151 (5th Cir.) - September 1, 1983.

23. Trial court sets a new execution date (October 6, 1983) - September 26, 1983.

24. Stay of Execution granted by United States Supreme Court: Baldwin v. Maggio, 52 U.S.L.W. 3259 - September 27, 1983.

STATEMENT OF FACTS

Timothy Baldwin, his wife Rita, and their seven children were neighbors of Mary James Peters in West Monroe, Louisiana, from 1971 until 1977. Mrs. Peters was godmother to their youngest, Russell. During the latter part of their stay in West Monroe, William Odell Jones also resided with the Baldwins. The group went to Bossier City for six months and then moved to Ohio. The oldest daughter, Michelle, remained in West Monroe with one brother. A second son entered the service. Marilyn Hampton and her three daughters stayed with the Baldwins in Ohio. Marilyn, Timothy Baldwin, and her children then left, accompanied by Jones. Baldwin and Jones worked together in the business of installing aluminum siding. After the departure of her husband, Rita Baldwin got in financial difficulties and was picked up on bad check charges. Her four younger children went to live with Michelle in West Monroe. Meanwhile, Timothy Baldwin, Jones, Marilyn Hampton and her three children led an itinerant existence. Their last means of transportation was a 1978 black Ford van, rented in Tampa, Florida.

On April 4, 1978, Marilyn Hampton and Timothy Baldwin drove the van to West Monroe. Jones and the children stayed at a cabin in Holmes State Park, near Jackson, Mississippi. Baldwin and Marilyn Hampton visited Michelle's apartment in West Monroe but left there around 8:00 P.M. Shortly thereafter, a van was seen parked in front of Mrs. Peters' house. A man and woman were observed leaving the residence between 10:00 and 11:00 P.M. Shortly before their departure, passersby saw and heard indications that someone in the Peters' home was being beaten. Baldwin testified in his own behalf and admitted that he and Marilyn visited Mrs. Peters that evening but denied the murder. Mrs. Peters, who was 85 years old, was beaten with various things, among them a skillet, a stool, a television and a telephone. She remained on the kitchen floor overnight and was discovered the next morning shortly before noon by an employee of the Ouachita Council Meals on Wheels, who was bringing her noon meal. Although helpless and incoherent, Mrs. Peters tried to defend herself against the police officers and the ambulance attendant who took her to the hospital. Dr. A. B. Gregory saw her in the emergency room around 12:30 P.M. on April 5, 1978, and found her semi-comatose. Her left cheekbone and jawbone were shattered; she had brain damage from multiple contusions and lacerations. According to Dr. Gregory, Mrs. Peters could not communicate

rationally. She died of the injuries the following day. Dr. Frank Chin, who performed the autopsy, attributed her death to massive cerebral hemorrhage and swelling, secondary to external head injuries.

Timothy Baldwin and Marilyn Hampton were subsequently located in El Dorado, Arkansas. Timothy Baldwin signed consents for the search of their motel room and the van. Two blue bank bags, one empty and one containing savings bonds and certificates of deposit payable to Mary James, were found in the van. Jones, to whom Marilyn Hampton and Timothy Baldwin had made inculpatory statements both before and after the crime, helped police officers locate a safe that had belonged to the victim in the LaFourche Canal in West Monroe. Baldwin's finger and palm prints were found on various items in the Peters' home: a cigarette lighter, a television set, and a coffee cup.

Baldwin also made inculpatory statements to his daughter, Michelle.

SUMMARY OF ARGUMENT

Petitioner's contentions that his trial counsel was ineffective and that the Court of Appeals erred by not requiring an evidentiary hearing on such issue are frivolous in light of the weight of evidence against him as applied to the applicable law and in light of various factors concerning the sentencing phase of trial. Baldwin would not have been entitled to a new trial under Louisiana Code of Criminal Procedure, article 851 because the motel check-in receipt would not have altered the verdict of the jury. The receipt is ambiguous. On the other hand, the evidence against Baldwin was unequivocal and convincing. It would have been futile for the trial counsel to file for a Motion for New Trial. Trial counsel was not ineffective because he did not.

Petitioner has twelve affidavits of persons who once knew him. None of these affidavits are compelling. There is no mention whether Baldwin ever provided trial counsel with these names. Baldwin has no complaint with those witnesses which were used. The brutality of the crime called for the death penalty and no amount of testimony would have changed this. Trial counsel was not ineffective during the penalty stage of trial.

Petitioner's contentions that because this Honorable Court granted a writ of certiorari in Pulley v. Harris concerning proportionality review in capital sentence cases, then a writ of certiorari should be granted in this case is unwarranted in light of this Court's denial of writs in Baldwin v. Blackburn and Williams v. Maggio and in light of Maggio v. Williams, No. 8-301. Challenge of the district by district review by the Louisiana Supreme Court of death penalty sentences for proportionality with other capital crimes does not merit Supreme Court review since similar issues have been presented in several petitions for certiorari and each time denied.

ARGUMENT - ISSUE 1

PETITIONER'S CONTENTIONS THAT HIS TRIAL COUNSEL WAS INEFFECTIVE AND THAT THE COURT OF APPEALS ERRED BY NOT REQUIRING AN EVIDENTIARY HEARING ON SUCH ISSUE ARE FRIVOLOUS IN LIGHT OF THE WEIGHT OF EVIDENCE AGAINST HIM AS APPLIED TO THE APPLICABLE LAW AND IN LIGHT OF VARIOUS FACTORS CONCERNING THE SENTENCING PHASE OF THE TRIAL.

Timothy George Baldwin, Petitioner, claims that he received ineffective assistance of counsel during his trial. Chronologically, the first example of ineffective counsel allegedly occurred during the sentencing phase of his capital murder trial. (Baldwin had been convicted of First Degree Murder during the guilt phase; it is noted that Baldwin made no complaints of inadequacy of counsel arising during that stage of trial.) Petitioner claims that his trial counsel should have done more for him during the sentencing phase. He speculates that the death penalty could have been avoided.

Baldwin's second allegation of ineffective assistance of counsel arises by trial counsel's failure to move for a new trial based on newly discovered evidence. At issue is a motel check-in receipt amply referred to in Petitioner's brief.

Petitioner's efforts to hold an evidentiary hearing on the issue of ineffective assistance of counsel have been denied by the state district court, state Supreme Court, federal district court, and the Fifth Circuit Court of Appeals. All of these courts have held that Baldwin's claims were without merit. Petitioner feels that these holdings are incorrect.

While in the Fifth Circuit Court of Appeals, decision in this case was delayed due to that Court's En Banc consideration of Washington v. Strickland, 673 F.2d 879 (5th Cir. 1982). See Appendix A. The ultimate holding in Washington, 693 F.2d 1243 (5th Cir. 1982) was fully applied to this case, as the ruling below suggests. See Baldwin v. Maggio, 704 F.2d 1325 (5th Cir. 1983). Washington set Fifth Circuit standards for evaluating claims of ineffective assistance of counsel. Washington also discussed remedies once ineffectiveness was shown.

In Washington, remand to the district court was ordered with instructions that the district court determine: (1) whether the right to effective assistance of counsel was violated; (2) if so, whether the defendant suffered actual and substantial detriment to the conduct of his defense; and (3) if there exists such a detriment, whether, in the context of the entire case, the detriment suffered was harmless beyond a reasonable doubt In adopting these rules, the

Fifth Circuit rejected a rule established by the Federal Court of Appeals for the District of Columbia in U.S. v. DeCoster, 624 F.2d 196 (C.A.D.C. 1979). DeCoster requires a petitioner asserting ineffective assistance of counsel to demonstrate: (1) what evidence would have been produced; and (2) that in context of entire case the additional evidence would have altered the result. (emphasis added).

Obviously, the DeCoster standard is more stringent upon a defendant than the Washington standard. Prosecutors prefer DeCoster. Thus, the State of Florida, which lost at the Fifth Circuit Court of Appeal in Washington, sought a writ of certiorari from this Honorable Court as to Washington v. Strickland; said writ of certiorari was granted by the United States Supreme Court on June 6, 1983. See Strickland v. Washington, 51 U.S.L.W. 3871. One of the questions squarely presented in Strickland is: Has the court of appeals (the Fifth Circuit), in expressly overruling Florida Supreme Court and expressly rejecting en banc opinion of another federal court of appeals, U.S. v. DeCoster, 624 F.2d 196 (C.A.D.C. 1976), applied correct standard for review of claims of ineffective assistance of counsel?

It is clear, then, that Petitioner Baldwin has had benefit of the Washington standard of review as to his claim of ineffective assistance of counsel. Despite this standard, he has shown nothing which is meritorious even for the conducting of an evidentiary hearing! Thus, petitioner's attempts to tie himself to the litigation of Strickland v. Washington should not be allowed. Baldwin's case is inapposite to Strickland. If the State of Florida prevails in Strickland, no effect is had upon Baldwin. The writ of certiorari should be denied on this basis.

A.

The respondents endorse the decision rendered in the court below. 704 F.2d 1325. That court dealt with Baldwin's claim in the correct manner.

Throughout his appellate and habeas proceedings, Baldwin has over-emphasized only two aspects of the case against him. He repeatedly ignores without explanation extensive evidence of his guilt in the murder of Mary James Peters.

This evidence includes admissions of wrongdoing by Baldwin to his daughter, Michelle Baldwin. Petitioner told his daughter that he would likely face "Old Smokey" for what he had done. He explained that "Old Smokey" meant the electric chair. When asked by Michelle why he did it, Baldwin replied, "She didn't suffer, it was fast."

Baldwin also made inculpatory statements to William Odell Jones. Prior to the murder, Baldwin indicated his plans to obtain money from Mrs. Peters and that he would kill her to get it if he had to. A day after the murder, Baldwin admitted that he had murdered Mrs. Peters by striking her with various objects, including a television. He also stated that he had stolen her valuables.

Baldwin's fingerprints were discovered on several objects in the house, including the television. Valuables belonging to Mrs. Peters were discovered and seized by police in Baldwin's van several days after the murder. A van was seen at Mrs. Peters' on the night of the murder. A safe belonging to Mrs. Peters was discovered in the same location where Jones observed and assisted Baldwin hide it.

At trial, Baldwin admitted that he had visited Mrs. Peters' home on the night of her murder. He also admitted that he owned and drove a van that night. It was demonstrated at trial that Baldwin had a criminal record.

Despite all of this evidence, Baldwin asserts that a motel check-in receipt discovered after trial should have prompted a motion for new trial. The Fifth Circuit provides an excellent evaluation of this ambiguous receipt. See Baldwin, 704 F.2d 1325, pp. 1330-1332. It is contended by Baldwin that the failure of trial counsel to file a motion for new trial based on this receipt is ineffective assistance.

Baldwin ignores Louisiana Code of Criminal Procedure, article 851 (West). This article describes the situations for which a new trial would be granted under Louisiana law. See Appendix B. Pertinent to Baldwin's case is article 851(3). The court, on motion of the defendant, shall grant a new trial whenever:

> "(3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty." (Emphasis added).

Louisiana jurisprudence is clear that a new trial will not be granted based on new and material evidence unless that evidence would have changed the verdict. State v. Isom, 427 So.2d 827 (La. 1982); State v. Baron, 416 So.2d 357 (La. 1982); State v. Robicheaux, 412 So.2d 1313 (La. 1982); State v. Naas, 409 So.2d 535 (La. 1981), certiorari denied 102 S.Ct. 2933; State v. Bolton, 408 So.2d 250 (La. 1981); State v. Miles, 402 So.2d 644 (La. 1981); State v. Marcel, 388 So.2d 565 (La. 1980); certiorari denied 101 S.Ct. 2300, rehearing denied 101 S.Ct. 3128.

As to the motel receipt, any allegations of ineffectiveness of trial counsel must be measured in light of Louisiana Code of Criminal Procedure, article 851 and not in light of what may happen in Strickland v. Washington. The Fifth Circuit correctly evaluated the duty of Baldwin's trial counsel under article 851. Baldwin, 704 F.2d at pg. 1330. The Fifth Circuit concluded that the motel receipt would not have changed the verdict. All other lower courts concerned with this case have agreed. Respondents assert that, on the basis of the whole record, the Baldwin jury would not have been influenced by the motel receipt.

Since there would be no remedy for Baldwin under article 851, he is not prejudiced by the failure of trial counsel to file a motion for new trial. Therefore, he cannot successfully contend that his trial counsel was ineffective.

B.

Baldwin suggests that his trial counsel was ineffective during the sentencing phase of the trial. He attaches twelve affidavits[1] in support of his contentions that additional witnesses could have testified on Baldwin's behalf in mitigation of the sentence. This attack on Petitioner's trial counsel is without merit due to these reasons.

First, considering these affidavits in light of the date of Mary James Peters' murder renders their contents of little value or use. The most recent acquaintance with Baldwin by any of the affiants was 1976. (See Petitioner's Appendix "G", exhibits 6,7,8,9,11). Some of these were neighbors of Baldwin in 1975-1976. (P.App."G", ex.6,7,8,11). One was a co-employee with Baldwin for six to eight months. (P. App."G", ex.9). Two of the affiants knew Baldwin only as the person who once installed siding on their homes. (P. App."G", ex. 3,10). Several affiants last had contact with Baldwin in the early 1970's. (P. App."G", ex.2,3,4,5). One affiant was a cousin who remembered Baldwin from childhood. (P. App."G", ex.12).

The murder occurred in 1978. It is indeed doubtful that any of those persons could have testified at trial due to evidentiary issues. Would their familiarities with Baldwin in 1976 and earlier have been relevant to his character in 1978?

None of these affiants have been subjected to cross-examination. What benefit would be had by the constant emphasis brought on by cross-examination that not one of these affiants had contact with Baldwin after 1976?

It should be noted that no trial attorney has the luxury of time afforded to appellate counsel in habeas corpus proceedings such as Baldwin's. Just how

long it took for appellate counsel to locate these twelve affiants is unclear. Most of the affidavits were sworn in early May, 1982. Equally unclear and of high importance is when Baldwin first began to give these names to counsel. Nowhere in his petition does he allege that he ever provided his trial attorney with names and addresses of sentence-phase witnesses. Certainly, Baldwin has a duty to assist his attorney in the preparation of the case.

It is conceivable that more than just twelve people knew Timothy Baldwin. They may exist in some unknown location. These possibilities would not render Baldwin's appellate counsel ineffective for enlisting only twelve affiants. As far as anyone knows, appellate counsel had only twelve names. However, Baldwin never alleges that his trial counsel ever was provided with more names than those of the witnesses used at trial.

There is bitter irony about the content of the twelve affidavits which have been submitted. All affiants swear to have once known and liked Timothy Baldwin. The trial record reflects that at least one other person once knew and apparently liked Baldwin. That person was Mary James Peters - the victim of this heinous crime. Baldwin was the murderer of this elderly lady!

Second, Baldwin does not complain about the use of those witnesses actually called on his behalf during the penalty stage. In fact, the use of Michelle Baldwin, who had been a key State's witness, to emotionally plead for her father's life is unquestionably effective. Baldwin simply feels that number of witnesses used was insufficient. In effect, Baldwin is saying that his trial counsel might have been more effective if more witnesses had been used. It is hard to imagine any defendant sentenced to death who is resolved that his lawyer did all that possibly could have been done during the penalty phase. This assertion by Baldwin does not translate as ineffectiveness of counsel. This Honorable Court should hold accordingly.

Third, the brutality of this crime upon a helpless elderly victim overshadows anything which could be offered in mitigation of the sentence. Mary James Peters was an eighty-five year old widow. She was cruelly and mortally beaten, robbed and abandoned. Her death was not instant. She suffered miserably throughout the night and on into the next morning. The person who discovered Mrs. Peters could not recognize Mrs. Peters' face due to the injuries inflicted. Mrs. Peters was conscious and moaning. She struggled defensively when law enforcement and medical personnel administered to her condition. Several objects, including a television, a telephone, a frying

pan and a mixer had been used to beat her. A number of her valuables had been stolen. It is wild speculation that anything could have influenced the jury to hand Baldwin a life sentence. Under such circumstances, Baldwin's trial counsel was not ineffective!

In totality of the above considerations, it is clear that the Fifth Circuit Court of Appeals committed no error in the decision below. To remand the case for an evidentiary hearing on the issue of ineffectiveness of counsel would be a vain and useless act. Baldwin can not display an "actual and substantial prejudice" created to him by his allegations of ineffective counsel - even <u>if</u> these contentions were proven. The petition for writ of certiorari should be denied.

<u>Footnote 1</u>

Affiant Rodney Eaker, (P. app. "G", ex. 13) went to trial on June 19, 1978 and was convicted as indicted of First Degree Murder. See Appendix D. The record reflects a month lapse of time between Eaker's trial and Baldwin's. Eaker's statement that "Tim's trial was immediately after mine" is suspect. In fact, as a convicted murderer, Eaker's credibility is suspect.

ARGUMENT - ISSUE 2

PETITIONER'S CONTENTION THAT BECAUSE THIS HONORABLE COURT GRANTED A WRIT OF CERTIORARI IN PULLEY V. HARRIS CONCERNING PROPORTIONALITY REVIEW IN CAPITAL SENTENCE CASES, THEN A WRIT OF CERTIORARI SHOULD BE GRANTED IN THIS CASE IS UNWARRANTED IN LIGHT OF THIS COURT'S DENIAL OF WRITS IN BALDWIN V. BLACKBURN AND WILLIAMS V. MAGGIO AND IN LIGHT OF MAGGIO V. WILLIAMS, NO. 8-301.

Baldwin contends that because the Louisiana State Supreme Court reviews death sentences on a judicial district by district basis instead of on a statewide basis, then an incorrect and unconstitutional "proportionality" review was conducted in his case. This argument suggests that the Louisiana Supreme Court cannot properly evaluate whether the death penalty imposed upon him is disproportionate to the punishment imposed on others for similar offenses. Petitioner claims that because this Court granted writ of certiorari in Pulley v. Harris, 460 U.S. ____ (1983), which involved proportionality review, then a writ of certiorari should be granted in this case as well.

Pulley dealt with a practice by the California Supreme Court to wholly fail to compare a capital defendant's case with other cases to determine whether his death sentence was disproportionate to the punishment imposed on others. Baldwin's case was subjected to proportionality review by the Louisiana Supreme Court (see Appendix C). The standard of the district by district proportionality review has been upheld in the Fifth Circuit Court of Appeals. See Williams v. Maggio, 679 F.2d 381 (5th Cir. 1982) and Baldwin v. Blackburn, 653 F.2d 942 (5th Cir. 1981). Baldwin v. Blackburn is the case at bar as it developed through its first habeas corpus stages. This Honorable Court refused to grant an application for writ of certiorari filed by Baldwin after Baldwin v. Blackburn. See Baldwin v. Blackburn, 456 U.S. 950, 102 S.Ct. 2021 (1982), rehearing denied 457 U.S. 1112, 102 S.Ct. 2918 (1982).

This Honorable Court denied the petition for certiorari in Williams v. Maggio, supra, as well. See Williams v. Maggio, 51 U.S.L.W. 3920 (June 27, 1983); rehearing denied 52 U.S.L.W. 3187.

On November 7, 1983, this Honorable Court issued a slip opinion in Maggio v. Williams (No. 8-301) vacating a stay of execution imposed by the Fifth Circuit Court of Appeals in Williams v. Maggio, 679 F.2d 381. Language in that opinion destroys Baldwin's contentions that deliberation on Pulley v. Harris means the granting of a writ of certiorari in this case. The Per Curiam opinion noted:

> "Williams' challenge to the Louisiana Supreme Court's proportionality review also does not warrant the issuance of a writ of certiorari. The en bac Fifth Circuit has carefully examined the Louisiana Supreme Court's procedure and found that it 'provides adequate safeguards against freakish imposition of capital punishment.' Williams v. Maggio, 679 F.2d at 395. This conclusion was challenged in this Court in Williams' petition for certiorari following the Court of Appeals' decision and in his motion for reconsideration of our denial of that petition. We were, of course, fully aware at that time that we had agreed to decide whether some form of comparative proportionality review is constitutionally required. See Pulley v. Harris, 460 U.S. ____ (1983).
>
> Since agreeing to decide this issue in Pul ey, the Court has consistently denied challenges to the Louisiana Supreme Court's proportionality review scheme that were identical to that raised by Williams. See Lindsey v. Louisiana, 464 U.S. ____ (1983); James v. Louisiana, 464 U.S. ____ (1983; Sonnier v. Louisiana, 463 U.S. ____, rehearing denied, 464 U.S. ____ (1983). See also Narcisse v. Louisiana, 464 U.S. ____ (1983)."

In light of Baldwin v. Blackburn, 456 U.S. 950; Williams v. Maggio, 51 U.S.L.W. 3920; Maggio v. Williams (No. 8-301) and these cases cited in Maggio v. Williams, it is clear that Baldwin's petition for the writ of certiorari based on district by district proportionality review must be rejected. Petitioner raises nothing which has not thoroughly been addressed and rejected before by this Honorable Court.

CONCLUSION

It is respectfully submitted that the Writ of Certiorari should be denied for the reasons herein presented.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

BARBARA B. RUTLEDGE
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BY: Michael J. Fontenot
MICHAEL J. FONTENOT

CERTIFICATE

It hereby is certified that a copy of the foregoing Opposition to Writ of Certiorari was this day served upon Ms. Helen Ginger Roberts, Attorney for Petitioner, at P. O. Box 1792, Alexandria, LA 71309, by depositing same in the United States mail, postage prepaid.

Monroe, Louisiana, this 21st day of November, 1983.

Michael J. Fontenot
MICHAEL F. FONTENOT

APPENDIX A

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

GILBERT F. GANUCHEAU
CLERK

September 14, 1982

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No. 82-3318 - Baldwin v. Ross Maggio, Jr., Etc., Et Al.

Dear Counsel:

En Banc consideration has been granted in the case of Washington v. Strickland, 673 F.2d 879, rehearing en banc granted, 679 F.2d 23, by Unit B of the Fifth Circuit Court of Appeals.

One of the issues in that case is the question of the standard to be followed in cases involving the effective assistance of counsel at the sentencing stage. This Court will await that decision before deciding the appeal of Baldwin v. Maggio, No. 82-3318 (5th Cir. argued Aug. 19, 1982).

Upon being supplied with copies of that decision, counsel will be allowed 10 days within which to file simultaneous supplemental briefs.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: Richard E. Windhorst, Jr.
Deputy Clerk

REW/gta

APPENDIX B

APPENDIX B

"ART. 851. Grounds for new trial

The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.

The court, on motion of the defendant, shall grant a new trial whenever:

(1) The verdict is contrary to the law and the evidence;

(2) The court's ruling on a written motion, or an objection made during the proceedings, show prejudicial error;

(3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty;

(4) The defendant has discovered, since the verdict or judgment of guilty, a prejudicial error or defect in the proceedings that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before the verdict or judgment; or

(5) The court is of the opinion that the ends of justice would be served by the granting of a new trial, although the defendant may not be entitled to a new trial as a matter of strict legal right."

APPENDIX C

meeting, the assistant district attorneys informed Mr. Baumler that there was an investigation into allegations of criminal conduct involving defendant and others. The assistant district attorneys inquired of Baumler whether Marcal would consider cooperating with the prosecution in return for some limited grant of immunity.

[24] No other evidence was offered. There is no evidence in this record to support a contention that the district attorney had such personal animosity that his personal interest conflicted with the fair and impartial administration of justice. In fact, there is no evidence in the record that Mr. Connick himself participated in any way in initiating or deciding to proceed with this prosecution against the defendant. Mr. Connick did not know about the facts of this case until after the investigation of the charges against defendant had been commenced by the district attorney's staff.

[25] The defendant bears the burden of proving that the district attorney has a personal interest in conflict with the fair and impartial administration of justice. *State v. Snyder*, 256 La. 601, 237 So.2d 392 (1970). There is no error in the trial court's ruling on the motion to recuse.

Our original opinion is reinstated, and the conviction and sentence of the defendant are affirmed.

STATE of Louisiana

v.

Timothy George BALDWIN.

No. 66033.

Supreme Court of Louisiana.

May 19, 1980.

Rehearing Denied Oct. 6, 1980.

Defendant was convicted by jury in Fourth Judicial District Court, Parish of Ouachita, John R. Joyce, J., of capital murder, and he appealed. The Supreme Court, Watson, J., held that: (1) no error occurred in denying defendant's motion for change of venue; (2) no error occurred in not allowing defendant to enter plea of not guilty by reason of insanity; (3) no error occurred in denying defendant's motion to suppress evidence seized from his motel room and van; (4) trial court did not abuse its discretion in denying defendant's challenges for cause of certain prospective jurors; (5) certain hearsay testimony was admissible to prove defendant's motive and intention; (6) no error occurred in denying mistrial when prosecuting attorney alluded to appeal; (7) no error occurred in allowing detective to testify as expert in fingerprint identification; (8) no error occurred in denying defendant's motion to exclude testimony by district attorney, who was called to rebut inference of immunity to certain witness, on ground that he did not appear on State's original witness list; (9) no error occurred in admitting into evidence black and white photograph of victim; (10) no error occurred in refusing to give defendant's requested special charge concerning correctness of identification of defendant; and (11) death sentence was not excessive.

Affirmed.

Dennis, J., concurred with reasons.

1. Criminal Law ⇐126(2)

In prosecution for capital murder, no error occurred in denying defendant's motion for change of venue, because defendant did not prove that there was such prejudice in collective mind of community that fair trial was impossible, where evidence at hearing on motion was that newspaper coverage was routine for murder case, television story quoted police chief as saying crime was "savage" and reporter characterized it as "brutal slaying," but these descriptions were not exaggerated, and lay witnesses at hearing were generally unfamiliar with crime although some had

sketchy impression about it from news media. LSA–C.Cr.P. art. 622.

2. Costs ⇐302.4
Criminal Law ⇐286
Mental Health ⇐434

In prosecution for capital murder, no error occurred in not allowing defendant to enter plea of not guilty by reason of insanity, in not appointing sanity commission and in not providing him with expert psychiatrist at state expense, because trial court properly found no cause for change of plea, where, at hearing on defendant's motion for change of plea, only evidence of impaired mental capacity was testimony that defendant had been heavy drinker. LSA–C.Cr.P. arts. 561, 643.

3. Witnesses ⇐305(2)

By taking stand at hearing on defendant's motion to suppress evidence seized from his motel room and van, defendant, charged with capital murder, subjected himself to cross–examination on issues relevant to that hearing, and any consent to searches was relevant to question of whether evidence should have been suppressed, and thus no error occurred in requiring defendant to identify his signatures on two documents giving permission for searches and seizures when defendant attempted to invoke his Fifth Amendment privilege against self–incrimination. U.S.C.A.Const. Amend. 5.

4. Searches and Seizures ⇐7(28)

In prosecution for capital murder, State carried burden of proving that defendant's consent to searches was voluntary and uncoerced, where there was no question that defendant was legally arrested pursuant to valid warrant, detectives testified at hearing on motion to suppress that defendant's written consents to searches were given freely and voluntarily, and defendant, who testified that he was not presented with warrant for searches, was properly required on cross–examination to identify his signatures on two documents giving permission for searches and seizures, even though he attempted to invoke his Fifth Amendment privilege against self–incrimination. U.S.C.A.Const. Amend. 5.

5. Jury ⇐90

In prosecution for capital murder, trial court did not abuse its discretion in denying defendant's challenge for cause of prospective juror, where, although juror had formed opinion about defendant's guilt or innocence, he testified that this would not affect his decision and that he could be fair as juror, juror stated that his personal friendship with police officer who testified for prosecution would not make him believe officer's testimony over that of any other witness and would not influence his verdict, but, rather, he could vote impartially after listening to evidence, and juror testified that he was not personal friend of investigator who assisted prosecution, but, rather, he knew him only to extent of knowing who he was. LSA–C.Cr.P. art. 797(2).

6. Jury ⇐90

Personal friendship relationship between prospective juror and police officer who testified for prosecution was not within purview of applicable section of statute governing challenge for cause. LSA–C.Cr.P. art. 797(3).

7. Jury ⇐83(3)

In prosecution for capital murder, trial court correctly found that testimony of prospective juror, who had served as assistant chief of police for city, who had served 21 years with city police department, but who had been retired for 16 years at time of trial, and who had no particular connections with defendant which would have made him ineligible to serve as juror, that he would be fair to both sides in his deliberations, that he would not believe police officer merely because he was officer and that he would find defendant not guilty if he had reasonable doubt in matter showed that he would be fair and impartial juror, despite his background in police work.

8. Jury ⇐90

In prosecution for capital murder, trial court did not abuse its discretion in failing to grant defendant's challenge for cause of prospective juror, whose brother–in–law

was city police officer, who was personally acquainted with other law enforcement people, and who admitted that he would favor testimony of officer over that of defendant, where prospective juror stated that relationship would not influence him, that he would give believable testimony from stranger equal weight with that of officer, he would consider testimony as whole, that policemen can make mistakes and that he would not exclude testimony contra to that of policeman.

9. Jury ⇐107

Prospective juror, who admitted that he would favor testimony of police officer over that of defendant because officers were trained observers and had nothing to gain by giving false testimony, but who said that he would give believable testimony from stranger, which he had no reason to doubt, equal weight with that of officer, and who agreed that policemen can make mistakes and said that he would not exclude testimony contra to that of policeman, was not unqualified to serve as juror merely because he regarded policemen as trained observers, as such did not imply that he would therefore accept their testimony without question.

10. Jury ⇐107

In prosecution for capital murder, trial court did not abuse its discretion in failing to grant defendant's challenge for cause of prospective juror, who thought indictment was some indication of guilt, who tended to believe law enforcement officers over lay witnesses, and who felt that defendant should testify in his own behalf, where prospective juror responded to court's rehabilitating questions correctly and stated that she could base her decision solely on evidence presented and instructions given by court, she indicated that she would accept what court told her regarding weight to be given to testimony, presumption of innocence, and defendant's constitutional right to refuse to testify, and her responses showed no bias.

11. Jury ⇐149

In prosecution for capital murder, no error occurred in denying defendant's motion for mistrial that alleged that juror, who knew district attorney, had perjured herself on voir dire by having denied knowing anyone who worked in district attorney's office, because juror had made no false statement, where she had first been asked on voir dire if she knew anyone in law enforcement, and she replied that she did not know anyone currently with sheriff's department, and she was not asked if she knew anyone in district attorney's office, but only what contact she had had with that office in connection with theft of her car, and she replied that deputy took care of matter and she did not talk to anyone else at district attorney's office on that occasion.

12. Witnesses ⇐240(2)

Even if, in prosecution for capital murder, certain question by State to one of its witnesses, whom State was trying to impeach, was leading in that it suggested phone call had been received, allowing witness to answer it did not prejudice defendant, and thus trial court did not abuse its discretion in allowing such question. LSA-R.S. 15:277, 15:487, 15:488.

13. Criminal Law ⇐698(1)

In prosecution for capital murder, in which State attempted to ask one of its witnesses certain question and trial court maintained objection on ground that subject was not covered on cross-examination, and counsel for State then stated that he would recall witness and defendant consented to question, defense counsel, by consenting to questioning, waived his objection. LSA-R.S. 15:281.

14. Criminal Law ⇐1169.2(4)

In prosecution for capital murder, no error occurred in allowing allegedly irrelevant testimony of certain witness in regard to relationship between certain woman and defendant, even though defendant contended that he was thereby placed in bad moral light as one who left his wife for another woman, as fact that both defendant and his

wife also testified about relationship meant that witness' testimony did not add anything.

15. Homicide ⇐158(1), 166(10)

In prosecution for capital murder, no error occurred in admitting witness' hearsay testimony that defendant told him he would kill victim if necessary to get her money, where statement was unquestionably voluntary, defendant received pretrial notice that statement would be used in evidence, and statement was admissible to prove defendant's motive and intention, as it showed defendant's state of mind immediately prior to murder. LSA-R.S. 15:446.

16. Criminal Law ⇐713

In prosecution for capital murder, no error occurred in denying defendant's motion for mistrial when prosecuting attorney alluded to appeal, where mere use of word appeal did not have prejudicial effect argued by defense counsel, remark was not within those enumerated in applicable statute as mandating mistrial, and admonition would have been sufficient, but defense counsel declined to request one so that he could not complain of any prejudice resulting from its omission. LSA-C.Cr.P. arts. 770, 771, 775.

17. Witnesses ⇐262

In prosecution for capital murder, in which defense counsel objected to State being allowed to recall witness to elicit testimony which exceeded scope of cross-examination, there was no error in allowing witness to be recalled and defense counsel waived his right to further examination of witness by stating "that's all we have." LSA-C.Cr.P. art. 765(5); LSA-R.S. 15:281.

18. Criminal Law ⇐478(1)

In prosecution for capital murder, no error occurred in allowing detective to testify as expert in fingerprint identification, where detective had been fingerprint officer for city police department for 18 months, he had worked in development of latent fingerprints for six years, he had specialized in comparison of latent fingerprints for 14 months prior to trial, he had attended various special schools, and his testimony showed complete familiarity and knowledge of subject of fingerprint identification.

19. Criminal Law ⇐398(1)

In prosecution for capital murder, no error occurred in admitting into evidence exhibit, which consisted of photographic enlargement of latent palm print found on cigarette lighter at scene of crime and photographic enlargement of defendant's palm, and which enlarged photographs to enable jury to make visual comparison, where defendant's contention that enlarged prints were not best evidence because of distortion was not substantiated in any particular.

20. Criminal Law ⇐438(8)

A photograph which is otherwise admissible should not be excluded merely because presented in enlarged form, and it is only when enlargement misrepresents evidence that such photograph should be excluded.

21. Criminal Law ⇐438(4)

In prosecution for capital murder, trial court did not abuse its discretion in allowing into evidence photographs taken by State at site where stolen safe was found in canal, where photographs were taken on morning of day they were introduced into evidence, and thus could not have been made available prior to trial, there was no evidence of bad faith by State, photographs were not inflammatory or prejudicial, and recess to enable defense counsel to examine photographs prior to their introduction cured any surprise and eliminated necessity of their being excluded.

22. Criminal Law ⇐629

In prosecution for capital murder, trial court did not abuse its discretion in denying defendant's motion to exclude testimony by district attorney, who was called to rebut inference of immunity to certain witness, on ground that he did not appear on State's original witness list, where State did not know his presence was necessary until immunity issue was raised, and defendant's contention that testimony of public figure created impression of guilt was not justi-

fied, because only subject of such testimony was immunity for certain witness and nothing in such testimony indicated personal belief in defendant's guilt or would create that impression on others. LSA–C.Cr.P. art. 764.

23. **Criminal Law** ⇐438(6)

In prosecution for capital murder, no error occurred in admitting into evidence black and white photograph of victim, which showed extent of injuries, identity of victim and probable cause of death, and which was unpleasant but not gruesome, as probative value outweighed any prejudice.

24. **Criminal Law** ⇐829(1)

In prosecution for capital murder, defendant's requested special charge was covered by general charges that made it clear to jury that every element of crime including identity of defendant had to be proven, and thus no error occurred in refusing to give defendant's requested special charge.

25. **Criminal Law** ⇐814(1)

Since, in prosecution for capital murder, there was no plea of not guilty by reason of insanity, defendant's requested special charges relating to plea of not guilty by reason of insanity were inappropriate and correctly denied. LSA–C.Cr.P. art. 803.

26. **Criminal Law** ⇐935(1)

In prosecution for capital murder, no error occurred in not granting defendant's motion for new trial on ground that there was no evidence of specific intent at time of crime, even though defendant contended that he may not have realized consequences of his act because of his mental state or intoxicated condition, where evidence did not establish that defendant was too intoxicated to realize what he was doing at time crime was committed, and there was ample evidence of requisite specific intent at time crime was committed.

27. **Homicide** ⇐171(1)

Fact that, in prosecution for capital murder, State rested its case at sentencing hearing on trial testimony and no additional evidence was presented to show cruel nature of offense did not mean that evidence of heinousness was introduced at guilt portion of trial in violation of certain case, since, because of particular nature of crime, evidence of cause of death necessarily included some description of victim's physical condition, and inference would arise that crime was cruel one, but this was not because any effort was made by State to stress this aspect of matter, but, rather, evidence of cause of death was admissible and in itself showed crime to have caused great pain and suffering.

28. **Criminal Law** ⇐1206(2)
Homicide ⇐354

Death sentence for first–degree murder of 85–year–old woman was not excessive, where there was no evidence that defendant's sentence was imposed because of passion, prejudice or other arbitrary factors, evidence supported jury's finding of statutory aggravating circumstances that defendant was engaged in armed robbery and that crime was committed in especially heinous, atrocious and cruel manner, and sentence was not disproportionate to penalty imposed in similar cases in parish in question, considering both crime and defendant. LSA–C.Cr.P. arts. 905.4(a, g), 905.5, 905.9; LSA–R.S. 14:2(3).

William J. Guste, Jr., Atty. Gen., Barbara Rutledge, Asst. Atty. Gen., Johnny C. Parkerson, Dist. Atty., John R. Harrison, Asst. Dist. Atty., for plaintiff–appellee.

J. Randolph Smith and Gilmer P. Hingle, Smith & Hingle, Monroe, for defendant–appellant.

WATSON, Justice.*

Timothy George Baldwin and Marilyn Lee Hampton were indicted by a grand jury for the first degree murder of Mary James Peters, in violation of LSA–R.S. 14:30. The trials were served and Baldwin was found guilty. After the sentencing portion of his trial, the jury unanimously recommended

* Honorable Richard H. Gauthier participated in this decision as Associate Justice Ad Hoc.

the death penalty. Two aggravating circumstances were found: that Baldwin was engaged in an armed robbery; and that the crime was committed in an especially heinous, atrocious and cruel manner. Defendant Baldwin has appealed, relying on forty assignments of error.

FACTS

Timothy Baldwin, his wife Rita, and their seven children were neighbors of Mary James Peters in West Monroe, Louisiana, from 1971 until 1977. She was godmother to their youngest son, Russell. During the latter part of their stay in West Monroe, William Odell Jones also resided with the Baldwins. The group went to Bossier City for six months and then moved to Ohio. The oldest daughter Michelle, remained in West Monroe with one brother. A second son entered the service. Marilyn Hampton and her three daughters stayed with the Baldwins in Ohio. Marilyn, Timothy Baldwin and her children then left, accompanied by Jones. Baldwin and Jones worked together in the business of installing aluminum siding. After the departure of her husband Rita Baldwin got in financial difficulties and was picked up on bad check charges. Her four younger children went to live with Michelle in West Monroe. Meanwhile, Timothy Baldwin, Jones, Marilyn Hampton and her three children led an itinerant existence. Their last means of transportation was a 1978 black Ford van, rented in Tampa, Florida. On April 4, 1978, Marilyn Hampton and Timothy Baldwin drove the van to West Monroe. Jones and the children stayed at a cabin in Holmes State Park, near Jackson, Mississippi. Baldwin and Marilyn Hampton visited Michelle's apartment in West Monroe but left there around 8:00 P.M. Shortly afterward, a van was seen parked in front of Mrs. Peters' house. A man and woman were observed leaving the residence between 10:00 and 11:00 P.M. Shortly before their departure, passerbys saw and heard indications that someone in the Peters' home was being beaten. Baldwin testified in his own behalf and admitted that he and Marilyn visited Mrs. Peters that evening, but denied the murder. Mrs. Peters, who was 85 years old, was beaten with various things, among them a skillet, a stool and a telephone. She remained on the kitchen floor overnight and was discovered the next morning shortly before noon by Elsie Mae Brice, an employee of the Ouachita Council Meals on Wheels, who was bringing her noon meal. Although helpless and incoherent, Mrs. Peters tried to defend herself against the police officers and the ambulance attendants who took her to the hospital. Dr. A. B. Gregory saw her in the emergency room around 12:30 P.M. on April 5, 1978, and found her semicomatose. Her left cheek bone and jaw bone were shattered; she had brain damage from multiple contusions and lacerations. According to Dr. Gregory, Mrs. Peters could not communicate rationally. She died the following day of the injuries. Dr. Frank Chin, who performed the autopsy, attributed her death to massive cerebral hemorrhage and swelling, secondary to external head injuries.

Timothy Baldwin and Marilyn Hampton were subsequently located in El Dorado, Arkansas. Timothy Baldwin signed consents for the search of their motel room and the van. Two blue bank bags, one empty and one containing savings bonds and certificates of deposit payable to Mary James were found in the van.[1] Jones, to whom Marilyn Hampton and Timothy Baldwin had made inculpatory statements both before and after the crime, helped police officers locate a safe which had belonged to the victim in the LaFourche Canal in West Monroe. Baldwin's finger and palm prints were found on various items in the Peters' home: a cigarette lighter, a television set and a coffee cup.

ASSIGNMENT OF ERROR NUMBER ONE

[1] Defendant contends that the trial court erred in denying his motion for a change of venue. The evidence at the hearing on the motion was that the newspaper

1. Mary James was the victim's name prior to her last marriage.

coverage was routine for a murder case. A television story quoted the police chief as saying the crime was "savage" (Tr. 277) and a reporter characterized it as a "brutal slaying" (Tr. 278). However, these descriptions are not exaggerated. The lay witnesses at the hearing were generally unfamiliar with the crime although some had a sketchy impression about it from the news media. The only one who testified that the public had a preformed opinion about defendant's guilt was Ludvic Herlevic, who had known the victim all of his life and took her to church every Sunday. Defendant did not prove that there was such prejudice in the collective mind of the community that a fair trial was impossible. LSA-C.Cr.P. art. 622. There was no difficulty in securing an impartial jury. Although only three months elapsed between the murder and the trial, many of the prospective jurors were completely unaware of the crime. The severe offense apparently had little impact on the community. Only one challenge for cause was granted because the prospective juror had a preconceived idea about Baldwin's guilt. There was no basis for a change of venue and the trial court correctly denied the motion. *State v. Clark*, 340 So.2d 208 (La.1976); *State v. Smith*, 340 So.2d 222 (La.1976).

This assignment lacks merit.

ASSIGNMENTS OF ERROR NUMBER TWO, THREE AND FOUR

[2] Defendant contends that the trial court should have allowed him to enter a plea of not guilty by reason of insanity; should have appointed a sanity commission and should have provided him with an expert psychiatrist at State expense. LSA-C.Cr.P. art. 561 provides that a defendant may withdraw a plea of not guilty and enter the alternate pleas of not guilty and not guilty by reason of insanity within ten days after arraignment, but the court may thereafter allow such a change "for good cause". The trial court found no cause for the change here. At the hearing on the motion for a change of plea, the only evidence of impaired mental capacity was testimony that Baldwin had been a heavy drinker. Compare *State v. Taylor*, 229 So.2d 95 (La.1970), where there was both lay and medical evidence of insanity. The trial court correctly concluded that there were no indicia of insanity, and no basis for the appointment of a psychiatrist or a sanity commission. LSA-C.Cr.P. art. 643; *State v. Clark*, 367 So.2d 311 (La.1979).

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER FIVE

[3, 4] Defendant objects to the trial court's denial of his motion to suppress the evidence seized from the Arkansas motel and the Ford van. There is no question that Baldwin was legally arrested pursuant to a valid warrant. At the hearing on the motion to suppress, four Louisiana detectives testified that Baldwin's written consents to the searches were given freely and voluntarily. Baldwin testified that he was not presented with a warrant for the searches. On cross-examination, he was asked to identify his signatures on the two documents giving permission for the searches and seizures. Counsel attempted to invoke Baldwin's Fifth Amendment privilege against self-incrimination, but the trial court required him to respond. By taking the stand at the suppression hearing, Baldwin subjected himself to cross-examination on the issues relevant to that hearing. *State v. Lukefahr*, 363 So.2d 661 (La. 1978). Any consent to the searches was relevant to the question of whether the evidence should have been suppressed. The trial court did not err in requiring Baldwin to identify his signatures. The State carried its burden of proving that Baldwin's consent to the searches was voluntary and uncoerced.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER SIX, SEVEN, EIGHT AND TEN

The defense exhausted its peremptory challenges and complains of the trial court's failure to excuse four prospective jurors for cause. The defense challenged all four peremptorily.

[5, 6] It is contended that Ernest Stansel should have been excused because of his personal friendship with Carlton Traweek, a police officer who testified for the prosecution, and because he had a fixed opinion about defendant's guilt.

Although prospective juror Stansel had formed an opinion about defendant's guilt or innocence, he testified that this would not affect his decision and that he could be fair as a juror. Stansel said that his personal friendship with Traweek would not make him believe Traweek's testimony over that of any other witness and would not influence his verdict. Stansel testified that he could vote impartially after listening to the evidence.

It is also argued in brief that Stansel was a personal friend of investigator Charles Dortch, who assisted the prosecution, but Stansel's testimony was that he knew Dortch only to the extent of knowing who he was.

The relationship between Stansel and Traweek was not within the purview of LSA-C.Cr.P. art. 797(3).[2] *State v. Watson*, 301 So.2d 653 (La.1974). Stansel was competent to serve as a juror. LSA-C.Cr.P. art. 797(2).[3] There was no abuse of discretion in denial of the challenge for cause.

[7] Defendant contends that prospective juror George A. Wood should have been excused because he had served as assistant chief of police for the City of Monroe. Although Wood had served twenty-one years with the Monroe Police Department, he said that he would be fair to both sides in his deliberations. He had been retired for sixteen years at the time of trial. He testified that he would not believe a police officer merely because he was an officer and that he would find defendant not guilty if he had a reasonable doubt in the matter. Woods had no particular connections with this defendant which would have made him ineligible to serve as a juror. Compare *State v. McIntyre*, 365 So.2d 1348 (La.1978). The trial court correctly found that Woods' testimony on voir dire showed that he would be a fair and impartial juror, despite his background in police work. See *State v. Qualls*, 353 So.2d 978 (La.1977).

[8, 9] Defendant contends that the trial court erred in failing to grant its challenge for cause of prospective juror Manning H. Kemp. Kemp's brother-in-law is a Monroe police officer and he is personally acquainted with other law enforcement people. Kemp stated that the relationship would not influence him but admitted that he would favor the testimony of a police officer over that of the defendant because police officers are trained observers, and have nothing to gain by giving false testimony. When examined by the court, Kemp said that he would give believable testimony from a stranger, which he had no reason to doubt, equal weight with that of a police officer. He testified that he had no preconceived notions about the case and could be a fair and impartial juror, free of any prejudice. Like the prospective juror in *State v. Governor*, 331 So.2d 443 (La.1976), Kemp said he would consider the testimony as a whole. He agreed that policemen can make mistakes and said he would not exclude testimony contra to that of a policeman.

Kemp was not unqualified to serve as a juror merely because he regarded policemen as trained observers. This does not imply that he would therefore accept their testimony without question. There was no abuse of discretion in refusal of the challenge for cause. *State v. Allen*, 380 So.2d 28 (La.1980).

2. LSA-C.Cr.P. art. 797(3) provides:
"The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, and the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;".

3. LSA-C.Cr.P. art. 797(2) provides:
"The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;".

[10] Both the State and the defense attempted to challenge prospective juror Vera Glass for cause: the State because of her views on capital punishment; and the defense because she thought an indictment was some indiction of guilt, tended to believe law enforcement officers over lay witnesses, and felt that defendant should testify in his own behalf. When the court instructed Ms. Glass that she could not consider the fact that defendant had been indicted as an indication of guilt, she answered that she would not. Ms. Glass' son had been a deputy and she knew other law enforcement officers. She tended to believe police officers because of her son's conscientious attitude about the law and admitted that past discussions with her son would probably affect her. Ms. Glass also admitted that the fact that she had an eighty-five year old mother might influence her and that she would always wonder why a defendant failed to testify. However, she responded to the court's rehabilitating questions correctly and stated that she could base her decision solely on the evidence presented and the instructions given by the court. Ms. Glass indicated that she would accept what the court told her regarding the weight to be given to the testimony, the presumption of innocence, and the defendant's constitutional right to refuse to testify. Her responses show no bias. Despite some confusion, she apparently understood the trial judge's instructions. She was able to extract the gist of his explanation that an indictment cannot be regarded as evidence of guilt and restate it in her own words (Tr. 843-844). Her comprehension was sufficient to make her a competent juror. Compare *State v. Nolan*, 341 So.2d 885 (La.1977). There was no abuse of discretion in the refusal to allow the challenge for cause.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER NINE

[11] Defendant contends that a mistrial should have been granted because one of the jurors, Judy Dell Puckett, perjured herself on voir dire. During the trial, it developed that Ms. Puckett knew District Attorney Parkerson and defendant contended that she had denied knowing anyone who worked in the district attorney's office. Ms. Puckett had first been asked on voir dire if she knew anyone in law enforcement. She replied that she did not know anyone currently with the Sheriff's Department. She was not asked if she knew anyone in the District Attorney's office, but only what contact she had had with that office in connection with the theft of her car. She replied that Deputy Gene Hatten took care of the matter and she did not talk to anyone else at the District Attorney's office on that occasion. No false statement was made by Judy Puckett. The trial court found no impediment to a fair trial and correctly denied the mistrial. *State v. Forbes*, 348 So.2d 983 (La.1977).

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER ELEVEN AND TWELVE

These assignments of error relate to allegedly prejudicial rulings relative to the examination of State witness Doris Ellen Baldwin. When the State tried to impeach Doris Baldwin's testimony, the trial court ruled that the State had failed to show either surprise or hostility. LSA-R.S. 15:487, 488. The trial court did, however, allow her to answer a question which was ruled "leading" and a question on re-direct examination which exceeded the subject matter of cross-examination.

[12] Doris Baldwin initially testified that she had talked with Bill Jones on Thursday, April 6, but did not remember whether she had talked to her father that day or not. The State attempted to impeach her on the basis of a prior inconsistent statement. The court made an in camera examination of the statement and found no real inconsistency, but ruled that the State could clarify "hazy areas" (Tr. 1279). Ms. Baldwin was then asked:

> "Miss Baldwin isn't it true that in fact you did receive a phone call from Bill and your father about 5:30 on the evening of Thursday . . .". (Tr. 1282)

The court ruled that the question was leading but not objectionable or prejudicial. Doris Baldwin was allowed to answer yes. When she was queried as to the content of the conversation, the trial court sustained an objection. The trial court did not abuse its discretion in allowing the first question. LSA-R.S. 15:277 prohibits leading questions to one's own witness. Even if the question were leading in that it suggested the phone call had been received, allowing the witness to answer it did not prejudice defendant. *State v. Quincy*, 363 So.2d 647 (La.1978).

[13] The State attempted to ask Ms. Baldwin whether she observed any injury to Barbara Hampton's face on Wednesday, April 6, and the trial court maintained an objection on the ground that the subject was not covered on cross-examination. LSA-R.S. 15:281. Counsel for the State then stated that he would recall the witness and defendant consented to the question. By consenting to the questioning, defense counsel waived his objection.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER THIRTEEN

[14] Defendant contends that the trial court erred in allowing irrelevant testimony of William Odell Jones in regard to the relationship between Marilyn Hampton and defendant. It is contended that defendant was placed in a bad moral light as one who left his wife for another woman. There is no basis for the contention because both Rita and Timothy Baldwin also testified about the relationship, and Jones' testimony did not add anything.

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER FOURTEEN, FIFTEEN, SIXTEEN, SEVENTEEN AND EIGHTEEN

[15] These assignments of error are directed to the testimony of William Odell Jones that Timothy Baldwin told him he would kill Ms. James [the name by which he knew Ms. Peters] if necessary to get her money. The hearsay testimony was allowed to show defendant's specific intent to murder the victim. LSA-R.S. 15:446. The statements were unquestionably voluntary. Defendant received pre-trial notice that the statements would be used in evidence, and the statements were admissible to prove Baldwin's motive and intention. *State v. Weedon*, 342 So.2d 642 (La.1977). They showed Baldwin's state of mind immediately prior to the murder.

These assignments of error lack merit.

ASSIGNMENTS OF ERROR NUMBER NINETEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SEVEN, AND TWENTY-EIGHT

Defendant contends that testimony about his arrest in Arkansas and the searches should not have been allowed because there was no probable cause for his arrest, and the searches of the motel room and the van were illegal. Since the arrest was legal and he consented to the resulting searches and seizures, testimony about the circumstances was clearly admissible.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER TWENTY-SIX

[16] Defendant complains that the trial court erred in denying a mistrial when the prosecuting attorney alluded to an appeal.

Defense counsel repeatedly objected to the testimony from the Arkansas deputies and others about the circumstances surrounding the arrest, searches and seizures. In response to one of these objections, the prosecution stated, "... counsel has reserved his rights for appeal, ...". (Tr. 1432) It is contended that the remark was improper and prejudicial, indicating to the jury that defendant would be convicted and would then appeal. Further, it is argued that the jury would regard the appellate process as another type of trial rather than a review of the record and the remark might induce them to convict the defendant because there would be another trial of his

guilt or innocence. LSA-C.Cr.P. art. 775 provides in pertinent part:

"Upon motion of a defendant, a mistrial shall be ordered, and in a jury case the jury dismissed, when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial, or when authorized by Article 770 or 771."

The trial court in its per curiam noted that in its opinion the word appeal did not necessarily connote a guilty verdict in the minds of the jurors. The trial court stated at the time that he did not feel the remark prejudiced defendant, but offered to admonish the jury. Defense counsel declined the admonishment on the ground that it would merely draw attention to the word appeal.

Mere use of the word appeal does not have the prejudicial effect argued by defense counsel. The trial court stated in its per curiam that the jurors' understanding of the judicial process was such that they would probably expect an appeal to result from a trial in all circumstances. The trial court did not feel the word necessarily connoted a conviction or guilty verdict. The remark is not within those enumerated in LSA-C.Cr.P. art. 770 as mandating a mistrial. It is only when the prejudice created by a remark prevents a fair trial and an admonition is insufficient that a mistrial should be ordered. LSA-C.Cr.P. art. 771. An admonition would have been sufficient here. Since defendant declined to request one, he cannot complain of any prejudice resulting from its omission. The drastic remedy of a mistrial was not warranted. *State v. Heads*, 370 So.2d 564 (La.1979); *State v. Matthews*, 354 So.2d 552 (La.1978). It is unlikely that the jury was aware that there is an appeal only from a conviction. No substantial prejudice was demonstrated.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWENTY-NINE

[17] Defense counsel objects to the State being allowed to recall a witness to elicit testimony which exceeded the scope of cross-examination. LSA-R.S. 15:281 places the scope of redirect examination within the trial judge's discretion, and LSA-C.Cr.P. art. 765(5) allows the trial court to permit additional evidence prior to argument.

There was no error in allowing the witness to be recalled and defense counsel waived his right to further examination of the witness by stating "that's all we have" (Tr. 1482).

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY

[18] It is contended that the trial court erred in allowing Detective Larry Norris to testify as an expert in fingerprint identification. Norris had been the fingerprint officer for the West Monroe police department for eighteen months and had worked in the development of latent fingerprints for six years. He had specialized in comparison of latent fingerprints for fourteen months prior to trial and had attended various special schools: the Law Enforcement Training Academy at LSU in Baton Rouge; the F.B.I. School at LSU; and the F.B.I. Academy in Quantico, Virginia. See *State v. Lewis*, 351 So.2d 1193 (La.1977); *State v. Madison*, 345 So.2d 485 (La.1977); and *State v. Overton*, 337 So.2d 1201 (La.1976). Norris' testimony shows complete familiarity and knowledge of the subject of fingerprint identification. The trial court did not err in accepting him as an expert in the field of fingerprint identification.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-ONE

[19, 20] Defendant complains about the admission in evidence of Exhibit S-34, a photographic enlargement of a latent palm print found on a cigarette lighter at the scene of the crime and a photographic enlargement of defendant's palm. The exhibit enlarged the photographs to enable the jury to make a visual comparison. A photograph which is otherwise admissible should

not be excluded merely because presented in an enlarged form. It is only when the enlargement misrepresents the evidence that such a photograph should be excluded. It is contended that the enlarged prints are not the best evidence because of distortion, but the claim that the enlargements distort the evidence is not substantiated in any particular.

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER THIRTY-TWO AND THIRTY-THREE

[21] Defendant contends that he was prejudiced by the State's failure to allow pretrial examination of photographs taken at the site where the safe was found in the LaFourche Canal. Counsel for defendant moved for a mistrial, and the motion was denied. The court allowed defense counsel to view the photographs during a trial recess. A motion was then made to exclude the pictures and all testimony concerning them because of the State's failure to disclose them prior to trial. LSA–C.Cr.P. art. 729.5. The trial court ruled that there was no prejudice to the defense and allowed the evidence to be admitted.

The photographs were taken on the morning of the day they were introduced into evidence and could not have been made available prior to trial. The recess to enable defense counsel to examine the evidence cured any surprise and eliminated the necessity of the evidence being excluded. The photographs themselves were not inflammatory or prejudicial; they merely illustrated the scene where the safe was discovered. Allowing defense counsel to view the photographs prior to their introduction was sufficient to assure a fair trial. The trial court found no evidence of bad faith on the part of the State, and there was no abuse of discretion in allowing the photographs into evidence.

These assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-FOUR

[22] Defense counsel moved to exclude testimony by District Attorney Parkerson on the ground that he did not appear on the State's original witness list, and the trial court denied the motion. This is assigned as error.

District Attorney Parkerson was called to rebut an inference of immunity to witness Jones. The State did not know his presence was necessary until the immunity issue was raised, and he was not sequestered. There was no abuse of discretion in allowing the witness to testify. LSA–C.Cr.P. art. 764; *State v. Bell*, 346 So.2d 1090 (La.1977). The contention that the testimony of a public figure creates an impression of guilt is not justified here, where the only subject was immunity for Jones. Nothing in the testimony indicates a personal belief in defendant's guilt or would create that impression in others.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-FIVE

Defendant objects to admission into evidence of various State exhibits.

[23] A black and white photograph of the victim is allegedly more prejudicial than probative. The photograph (S–16G) shows the extent of the injuries, the identity of the victim and the probable cause of death. It is unpleasant but not gruesome. The probative value outweighs any prejudice. *State v. Trass*, 347 So.2d 1156 (La.1977).

Other objects were objected to on the ground of improper identification and an improper chain of custody. These contentions are unfounded.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-SIX

[24] Defendant complains that the trial court erred in refusing to give requested special charge, number 3 as follows:

"The prosecution must prove beyond a reasonable doubt, not only that the offense was committed as alleged in the indictment, but that the defendant was the person who committed it. You must

be satisfied beyond a reasonable doubt of the accuracy and correctness of the identification of the defendant before you may convict him.

"You are further instructed that it is not necessary for the defendant to prove that another person may have committed the crime; if the circumstances of the identification are not convincing beyond a reasonable doubt, you must find the defendant not guilty." (Tr. 148, 149)

The trial court concludes that the charge was covered by the general charges which stated in pertinent part:

"If you entertain any reasonable doubt as to any fact or element necessary to constitute the defendant's guilt, it is your sworn duty to give him the benefit of that doubt and to return a verdict of acquittal." (Tr. 152)

"[If] you find the evidence unsatisfactory upon any single point indispensably necessary to constitute the accused's guilt, this would give rise to such a reasonable doubt as would justify you in rendering a verdict of not guilty." (Tr. 153)

The general charges made it clear to the jury that every element of the crime including the identity of the defendant had to be proven. *State v. Stewart*, 357 So.2d 1111 (La.1978).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-SEVEN

[25] Defendant contends that the trial court should have given requested special charges relating to the plea of not guilty by reason of insanity. Since there was no plea of not guilty by reason of insanity, the charges were inappropriate and correctly denied. LSA–C.Cr.P. art. 803.

This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THIRTY-EIGHT

[26] Defendant contends that the trial court should have granted a motion for new trial on the ground that there was no evidence of specific intent at the time of the crime. It is contended that defendant may not have realized the consequences of his act because of his mental state or intoxicated condition. The evidence does not establish that defendant was too intoxicated to realize what he was doing at the time the crime was committed, and there is ample evidence of the requisite specific intent at the time the crime was committed.

This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBER THIRTY-NINE AND FORTY

[27] Defendant contends that the trial court should have granted his motion to arrest judgment and erred in overruling his objection to imposition of sentence.

The State rested its case at the sentencing hearing on the trial testimony. No additional evidence was presented to show the cruel nature of the offense. Consequently, it is contended that evidence of heinousness was introduced at the guilt portion of the trial in violation of *State v. Payton*, 361 So.2d 866 (La.1978).

Because of the particular nature of this crime, the evidence of the cause of death necessarily included some description of Ms. Peters' physical condition. An inference would arise that the crime was a cruel one, but this is not because any effort was made by the State to stress this aspect of the matter. Evidence of the cause of death was admissible and in itself showed the crime to have caused great pain and suffering.

At sentencing, the jury found two aggravating circumstances. The jury was charged as to the statutory mitigating circumstances and there is no reason to believe that these were not properly considered since the verdict states that the recommendation was made "after consideration of the mitigating circumstances" (Tr. 162).

The evidence supports the jury's conclusion that the crime was committed during an armed robbery and that the offense was committed in an especially cruel manner.

These assignments of error lack merit.

SENTENCE REVIEW

[28] Art. 1, § 20 of the Louisiana Constitution of 1974 prohibits excessive punishment. LSA–C.Cr.P. art. 905.9 mandates that each death sentence be reviewed to determine if it is excessive under the circumstances. The criteria for review are:

"(a) whether the sentence was imposed under the influence of passion, prejudice, or any other arbitrary factors, and

"(b) whether the evidence supports the jury's finding of a statutory aggravating circumstance, and

"(c) whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant."

A. PASSION, PREJUDICE OR OTHER ARBITRARY FACTORS

There is no evidence that Baldwin's sentence was imposed because of passion, prejudice or other arbitrary factors.

B. AGGRAVATING CIRCUMSTANCES

(1) Armed Robbery

Timothy Baldwin admitted that he was carrying a knife when he went to Ms. Peters' house the night of the murder. The knife did not show any evidence of blood, but the other items used to beat Ms. Peters were dangerous weapons in the manner used. *State v. Bonier*, 367 So.2d 824 (La. 1979); LSA–R.S. 14:2(3). The safe and its contents which were taken from the premises were in Ms. Peters' immediate control, though not on her person. The fact that the safe was taken from the bedroom and Ms. Peters was beaten in the kitchen is immaterial. The property was in Ms. Peters' home and under her control. *State v. Verret*, 174 La. 1059, 142 So. 688 (1932).

There is no doubt that Baldwin was engaged in an armed robbery when he killed Ms. Peters. The jury correctly found that statutory aggravating circumstance to be present. LSA–C.Cr.P. art. 905.4(a).

(2) Cruelty

An especially cruel murder is one that causes death in a particularly painful and inhuman manner. While this aggravating circumstance necessarily involved some degree of subjectivity, the facts reflect that Ms. Peters was severely beaten with various objects including a skillet, a stool and a telephone, and left to die a lingering death. There can be no question that a prolonged beating is an especially cruel way to commit murder. This is particularly true when the blows are inflicted upon an aged female, who is unable to effectively resist. Ms. Peters' feeble effort to fight her rescuers shows that she was conscious on some level of the need to defend herself. Unable to summon help, she had remained in terror for approximately twelve hours before she was discovered. The record does not clearly show whether Baldwin was aware that he had left Ms. Peters to die a slow death. Undoubtedly he assumed she could not survive his merciless beating or he would not have left her with the possibility of later identifying him. However, he made no effort to end her miserable and suffering condition. His action was atrocious in that it violates the bounds of common decency. The jury correctly found that this murder was committed in an especially heinous, atrocious and cruel manner. LSA–C.Cr.P. art. 905.4(g).

The evidence supports both of the statutory aggravating circumstances found by the jury.

C. DISPROPORTIONATE SENTENCE

The sentence review memorandum on behalf of the State of Louisiana shows two other first degree murder convictions in Ouachita Parish between January 1, 1976, and September 5, 1978. One defendant, Charlie Lee Carter, was sentenced to life imprisonment and the other, Dalton Prejean, was given the death penalty. Charlie Lee Carter was a twenty-six year old male, who murdered Alfred C. Carter with a pistol. There were no aggravating circumstances and the jury recommended the lesser penalty of life imprisonment. Dalton

Prejean, aged seventeen, killed police officer Donald Cleveland with a revolver. The aggravating circumstance was that the victim was a peace officer engaged in his lawful duties LSA–C.Cr.P. art. 905.4(b). Despite the mitigating circumstance of Prejean's youth, he received the death penalty. LSA–C.Cr.P. art. 905.5(f).

Considering this sentence in relation to the mitigating circumstances in LSA–C. Cr.P. art. 905.5, the Post Sentence Report shows that Baldwin has a prior history of criminal activity commencing at an early age.

There is no evidence that the crime was committed under the influence of mental or emotional disturbance. Dr. John N. Ritchey and Dr. Merritt N. Dearman, a psychiatrist, concluded that Baldwin did not have any mental disorder which prevented him from understanding the proceedings against him and assisting counsel in his defense. Neither doctor found a psychiatric illness or any evidence to suggest a history of psychosis. Dr. Ritchey stated that Baldwin has a "Character Disorder" but no mental impairment. Dr. Dearman felt that Baldwin falls into the category of a "socio–pathic personality, anti–social type."

There is no evidence that Baldwin was under the influence of another person when the crime was committed. On the contrary, he has a strong personality and was a leader rather than a follower, as in his relationship with Jones.

Baldwin did not claim any extenuation for his conduct. Although he denied the crime in interviews with the two physicians, he admitted that Ms. Peters endured "a very brutal death".

There is evidence that Baldwin was drinking on the evening of the crime, but nothing to suggest that his intoxication was such that he was unaware of what he was doing. Far from exhibiting a mental defect, Baldwin is of above average intelligence and claimed an I.Q. of 147.

Dr. Dearman gave Baldwin's date of birth as September 17, 1937, and the Post Sentence Report gives his date of birth as September 17, 1942. Regardless of which is correct, he is a mature man with a large family and not a youthful offender.

There is no evidence that Baldwin's participation in the crime was minor. Although the testimony of his wife and two of his children indicate that Baldwin was at one time a good husband and father this was not the case for a long time prior to the murder. He had left his wife and family, and was not supporting them. It is contended that his high I.Q. would enrich the prison community, but, in view of the doctors' evaluation of his personality, it is doubtful that this would be the case.

The record does not establish that Baldwin's death sentence is disproportionate when viewed in comparison with that meted out for similar crimes or that the sentence is excessive.

For the reasons assigned, the conviction and sentence are affirmed.

AFFIRMED.

DENNIS, J., concurs with reasons.

DENNIS, Justice, concurring.

I respectfully concur.

I remain of the belief that our scheme for review of the proportionality of the imposition of the death penalty is constitutionally flawed in not mandating statewide review of the sentences imposed in similar cases. See *State v. Prejean*, 379 So.2d 240, 249 (La.1980) (dissenting from denial of rehearing). However, the extraordinary deliberateness and brutality of this murder of an 84–year old woman for her valuables clearly justifies the death penalty without need of extensive comparison with other offenses.

APPENDIX D

Saturday, June 24, 1978
Division B, Courtroom #2

Court opened at 10:10 a.m. pursuant to adjournment. Present: Hon. Lemmie O. Hightower, Judge; Beth Lord and Glen Springfield, Deputy Sheriffs; Ella Faye Wheeler and Betty Laird, Court Reporters; and, Dorothy L. Dunn, Deputy Clerk.

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37,814 - State of Louisiana vs. Rodney O. Eaker

Defendant present, represented by Hon. J. Randolph Smith and co-counsel, Hon. Gilmer Hingle. The State of Louisiana was represented by Assistant District Attorney Steven A. Hansen. Trial resumed. Outside of hearing of jury, Defense's motions styled Request for Special Charges and Request for Additional Special Charges, tendered to the Court previously and filed this date, were taken up and the Court responded, finding No. 1 was included in another of special charges; No. 2, not fully correct; No. 3, not fully correct; No. 4, included in another special charge; No. 5, not fully correct; No. 6, require qualification, limitation and further explanation; No. 7, same as No. 6; No. 8, covered in general charge; No. 9, not fully correct; No. 10, incorrect statement of law; No. 11, included in general charge; No. 12, not fully correct; #13, embodied in Article 13, C.Cr.P. and included in general charge; No. 14, included in general charge; Defense objected to general charges and denial of special charges. Said objection noted. Thereafter, the jury was brought in and the Court gave its charge to the jury. The jury, after hearing the evidence of the State and Defense and the arguments of counsel, State and Defense, and hearing the charge of the Court, retired at 10:37 a.m. to consider a verdict. The two (2) alternate jurors were by the Court ordered sequestered pending a verdict. Thereafter, the jury returned at 11:06 a.m., the Court reconvening at 11:12 a.m., and requested, through their foreman, that the following evidence be removed to deliberating room: taped statement of defendant, the door, clothing of victim and clothing of defendant, and pictures; and, in addition thereto, requested written definitions of the law pertaining to First Degree Murder, Second Degree Murder and Manslaughter. In re Written Definitions, the Court stated no written definitions could be given, but the Court re-read the three definitions. In re request for physical evidence the Court stated that nothing other than the tapes could be provided and that there was no playing permitted. In re pictures and victim's and defendant's clothing and the door, the Court ordered that the Clerk deliver said items to the deliberating room. Thereafter, the jury again retired at 11:20 a.m. Defense counsel, Mr. Smith objected to the Court's ruling re tape recording, the furnishing of the tape to the jury but the jury not being allowed to listen. Objection noted. The Court's Charge to the Jury was filed into the record. The jury returned at 3:50 p.m., Mr. Smith waiving Mr. Hingle's presence for purpose of this part of the proceeding. The jury, through their foreman requested copies of defendant's oral statement, the Court denying said request, and further requested a re-reading of the statutes First Degree Murder, Second Degree Murder, and Manslaughter; said request was granted, the Court reading in addition thereto the statute re Aggravating Circumstances at the time of each re-reading. Thereafter, the jury again retired at 4:00 p.m. The alternates were sequestered. Thereafter the jury returned at 9:12 p.m., returning the following verdict: "1. Guilty Jimmy R. Marriweather Foreman 6/24/78 841 pm." The verdict was by the Court ordered recorded. The jury in

-38,240 - State of Louisiana vs. Ernest Franklin Clay (Continued) to be intelligently and voluntarily entered and accepted same and ordered a pre-sentence investigation returnable on or before July 6, 1978, and advised Mr. Heard to contact the Court for a sentence setting convenient to him (Mr. Heard). Defendant was continued on bail.

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-37,919 - State of Louisiana vs. William Green
Defendant present, represented by Hon. Murphy Blackwell, Jr. Defendant requested that his formerly entered not guilty plea to DWI--Third Offense be withdrawn and entered a plea of guilty to DWI--Second Offense, a plea which was responsive and acceptable to the State. In discussion with the Court, defendant stated that he had conferred with counsel and was satisfied with the representation; understood the charge; understood his right to confrontation and against self-incrimination; understood his right to trial by jury and waived same; understood his right to appeal had he maintained his not guilty plea and had gone to trial and had been found guilty and waived same; realized he was not obliged to plead guilty and that his plea was not influenced by any promises, persuasion or coercion on the part of others; knew the maximum penalty he faced and realized the Court and no other person would determine his sentence (see record of interrogation). The Court found the plea to be intelligently and voluntarily entered and accepted same and sentenced defendant to pay a fine of $300.00 & costs, default 55 days, and sentenced defendant to serve one hundred twenty-five (125) days in the Ouachita Parish Jail.

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-38,089 - State of Louisiana vs. Kay Frances Hoy
Defendant present, represented by Hon. James D. Sparks, Jr. Matter before the Court for a decision to be rendered as to defendant's Sanity Hearing. The Court found defendant capable of understanding and assisting counsel in her defense. Mr. Sparks objected to the Court's ruling, and said objection was noted.

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-37,814 - State of Louisiana vs. Rodney O. Baker
Defendant present, represented by Hon. J. Randolph Smith, co-counsel Hon. Gilmer Hingle; the State of Louisiana was represented by Assistant District Attorney Steven A. Hansen. Case came on for trial, and the Court ordered the Clerk to bring into Open Court the General Venire box and to draw therefrom forty (40) names of persons to serve as Tales Jurors and to report this date at 3:00 p.m., and a copy thereof be furnished to the Attorneys--State and Defense. Thereafter, twenty-nine (29) jurors from the regular venire were duly drawn and examined. There were five (5) challenges for cause--John William Frith, Rosie A. Cole, Elaine Wyrick, Charles Julius Smith, and Shari L. Logan. There were four (4) peremptory challenges by the State--Ronald M. Butler, Larry P. Lawrence, Minnie Wilson Goldsmith, and Harry G. Prophit, IV. There were eleven (11) peremptory challenges by Defense--Barbara J. Maxey, Bobby G. Wood, Mary L. Robinson, Timmy Gunther, Shirley H. Bradley, Harl Michael Bowen, John W. Spurgeon, Arabella B. Cann, Louis D. Sanders, Robert E. Shelby, and Victor Guirlando. And, the following nine (9) persons were individually sworn upon their acceptance: Mr. R. B. Pickering, Mary H. Allen, Charles Edward Gwin, Fred Thomas, Jr., James K. Lehr, Jimmy Ray Merriweather, Sandra F. Williams, Beverly D. Williams, and Robin Courtman Redding.

-38,240 - State of Louisiana vs. Ernest Franklin Clay
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37,814 - State of Louisiana vs. Rodney O. Baker
(Continued) Prior to calling the regular venire, Defense filed the following motions--Request for Judge to Reduce Charge to Writing and Motion for Rule to Show Cause Why Certain Photographs Should Not Be Introduced into Evidence, furnishing the State with copies, the Court holding same in abeyance. The regular venire being exhausted, the Court ordered nine (9) jurors from the tales jury list called. There were two (2) challenges for cause--Betty J. Cook andSidney B. Fitch. There was one (1) peremptory challenge by the State during the alternate juror selection--Connie Prince Ellington. There was one (1) peremptory challenge by Defense--Percy E. Rogers. And, the following tales jurors were individually sworn upon their acceptance--Beverly C. Cole, Betty C. Kutz, Lawrence M. Crocker; and two (2) alternates--Charles T. Johnson and James C. Childers. Prior to each recess and adjournment, the jury was instructed as to its behavior and sequestered. The selection of the jury being completed, the Court ordered the proceedings continued to June 20, 1978, 8:45 a.m.

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- - In Re Ronald M. Butler (juror, Petit Venire week 6-19-78)
- - In Re Shari L. Logan (juror, Petit Venire week 6-19-78)
Both jurors (Mr. Butler #27 and Mrs. Logan #51) failing to appear for jury duty, the Court ordered attachments issue. At a later time, each was brought in and the Court ordered each to pay a fine of $25.00 and costs and suspended the fine as to each on payment of Court costs. A stay of execution was granted Mrs. Logan to Friday, June 23, 1978.

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THE COURT RECESSED AT 12:20 P.M.

THE COURT RECONVENED AT 1:40 P.M.

THE COURT RECESSED AT 4:00 P.M.

THE COURT RECONVENED AT 4:15 P.M.

RECESS 5:40 P.M. - RECONVENED 6:00 P.M.

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OUACHITA PARISH, LA.

THE COURT ADJOURNED AT 7:22 P.M.

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